BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**APD No.: 12.01-131749J**
	)	**TID No.: 15-044**
JOHN PAUL KILL,	)	
	)	
Respondent	)	

INITIAL ORDER

This matter was heard on October 15, 2015, in Nashville, Tennessee before the Honorable Randall LaFevor, Administrative Law Judge ("ALJ"), assigned by the Secretary of State, Administrative Procedures Division ("APD"), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). Kathleen Dixon, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division ("Division"), in this matter. John Paul Kill, ("Respondent"), was not present, nor was an attorney or other representative present on his behalf.

NOTICE OF DEFAULT

Petitioner moved for default based on failure of the Respondent, or his representative, to appear at the scheduled hearing after receiving proper notice thereof. In support of the motion, Petitioner submitted a certified mail receipt showing that the Division's Notice of Hearing and Charges ("Notice") was received and signed for at Respondent's address of record on June 26, 2015. The record indicates that service was legally sufficient in accordance with Tenn. Code Ann. §§ 4-5-307 and 56-6-112(f); and Tenn. Comp. R. & Regs. 1360-04-01-.06 and 1360-04-01-

.15(c). The Respondent was held in **DEFAULT** and Petitioner was permitted to proceed on an uncontested basis.

INITIAL ORDER

The subject of this hearing was the proposed revocation of Respondent's Tennessee insurance producer license and entry of an order assessing civil penalties against Respondent for violations of Tennessee Code Annotated ("Tenn. Code Ann.") §§ 56-6-112(a)(2), 56-6-112(a)(4), 56-6-112(a)(5), 56-6-112(a)(6), and 56-6-112(a)(8), and Tenn Code Ann. § 56-6-119(b). After consideration of the evidence, testimony, and entire record in this matter, it is determined that:

a. Respondent's insurance producer license is **REVOKED;**

b. Respondent be assessed a civil monetary penalty of **one hundred thousand dollars ($100,000.00)** for each violation and continuing violation of Tenn. Code Ann. §§ 56-6-112(a)(2), 56-6-112(a)(4), 56-6-112(a)(5), 56-6-112(a)(6), and 56-6-112(a)(8), and Tenn. Code Ann. § 56-6-119(b); and

Respondent shall have **sixty (60) days** from receipt of this Initial Order to pay the above mentioned civil monetary penalties plus the Division's litigation costs pursuant to Tennessee Rules of Civil Procedure ("TRCP") 54.04.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Division is the lawful agent through which the Commissioner administers the Law, and is authorized to bring this action for the protection of the people.

2. Respondent is licensed by the Division to sell insurance in this state as an insurance producer, having obtained said license, numbered 2177369, on September 19, 2012.

3. Respondent's insurance producer license is currently in inactive status, having been surrendered on or about December 10, 2014.

4. At all times relevant, Respondent owned and operated Appeal Insurance Agency of Norcross, GA ("Appeal"), operated out of Respondent's home.

5. On or about July 9, 2013, Respondent purportedly sold two trucking insurance policies reportedly through insurer Lloyds of London and National Indemnity Company to insurance broker Salter Insurance Agency ("Salter") to insure Ervin Jack Quinn ("Quinn") d/b/a Temple Trucking ("Temple"), an Erin, Tennessee trucking company.

6. Quinn, on behalf of Temple, paid approximately fourteen thousand, thirteen dollars ($14,013) to Respondent for the trucking insurance policy issued by Respondent reportedly through Lloyds of London and National Indemnity Company.

7. At no time did the trucking insurance policy sold by Respondent for Temple exist; Temple never received trucking insurance coverage from Respondent.

8. To date, Respondent has failed to refund the approximate fourteen thousand, thirteen dollars ($14,013) paid by Quinn.

9. On or about October 21, 2013, Respondent purportedly sold trucking insurance policy number CSAT 4173291 reportedly through insurer Certain Underwriters at Lloyds to insurance broker Bilbrey & Cox Insurance ("Bilbrey & Cox") to insure Diomar and Saul Rodriguez ("Rodriguez"), a Pikeville, Tennessee trucking company.

10. Bilbrey & Cox, on behalf of Rodriguez, paid approximately eight hundred ninety-two dollars ($892) to Respondent for the trucking insurance policy issued by Respondent reportedly through Certain Underwriters at Lloyds.

11. At no time did the trucking insurance policy sold by Respondent for Rodriguez exist; Rodriguez never received trucking insurance coverage from Respondent.

12. To date, Respondent has failed to refund the approximate eight hundred ninety-two dollars ($892) paid by Bilbrey & Cox.

13. On or about November 20, 2013, Respondent purportedly sold trucking insurance policy number CSAP 818322 reportedly through insurer Certain Underwriters at Lloyds to insurance broker Salter to insure Kenneth Lesure ("Lesure") d/b/a KL Trucking, a Memphis, Tennessee trucking company.

14. Lesure, on behalf of KL Trucking, paid approximately thirteen thousand, two hundred thirty dollars ($13,230) to Respondent for the trucking insurance policy issued by Respondent reportedly through Certain Underwriters at Lloyds.

15. At no time did the trucking insurance policy sold by Respondent for KL Trucking exist; KL Trucking never received trucking insurance coverage from Respondent.

16. To date, Respondent has failed to refund the approximate thirteen thousand, two hundred thirty dollars ($13,230) paid by Lesure.

17. On or about December 17, 2013, Respondent purportedly sold trucking insurance policy number CSPR 5177391 reportedly through insurer Certain Underwriters

at Lloyds to insurance broker Bilbrey & Cox to insure Floyd and Sybil Stanley ("Stanley") d/b/a Duke's Place, a Crossville, Tennessee company.

18. Bilbrey & Cox, on behalf of Duke's Place, paid approximately three thousand, six hundred fifty-four dollars ($3,654) to Respondent for the trucking insurance policy issued by Respondent reportedly through Certain Underwriters at Lloyds.

19. At no time did the trucking insurance policy sold by Respondent for Duke's Place exist; Duke's Place never received trucking insurance coverage from Respondent.

20. To date, Respondent has failed to refund the approximate three thousand, six hundred fifty-four dollars ($3,654) paid by Bilbrey & Cox.

21. On or about January 6, 2014, Respondent purportedly sold a trucking insurance policy reportedly through insurer Lloyds of London to insurance broker Bilbrey & Cox to insure Tim Burks ("Burks"), a Pikeville, Tennessee company.

22. Bilbrey & Cox, on behalf of Burks, paid approximately one thousand, fifty dollars ($1,050) to Respondent for the trucking insurance policy issued by Respondent reportedly through Lloyds of London.

23. At no time did the trucking insurance policy sold by Respondent for Burks exist; Burks never received trucking insurance coverage from Respondent.

24. To date, Respondent has failed to refund the approximate one thousand, fifty dollars ($1,050) paid by Bilbrey & Cox.

25. On or about January 16, 2014, Respondent purportedly sold a trucking insurance policy number CIP 629371 reportedly through insurer Lloyds of London to insurance broker Patton Insurance Agency, Inc. ("Patton") to insure Clifford Thacker

("Thacker") d/b/a Calpro Services & Consulting ("Calpro"), a Jamestown, Tennessee company.

26. Patton, on behalf of Calpro, paid approximately one thousand, one hundred fifty-five dollars ($1,155) to Respondent for the trucking insurance policy issued by Respondent reportedly through Lloyds of London.

27. At no time did the trucking insurance policy sold by Respondent for Calpro exist; Calpro never received trucking insurance coverage from Respondent.

28. To date, Respondent has failed to refund the approximate one thousand, one hundred fifty-five dollars ($1,155) paid by Patton.

29. On or about January 30, 2014, Respondent purportedly sold a trucking insurance policy number 4391824 reportedly through insurer Lloyds of London to insurance broker Patton to insure Brenda Goney ("Goney") d/b/a Horseman's, a Jamestown, Tennessee company.

30. Patton, on behalf of Horseman's, paid approximately one thousand, four hundred seventeen dollars and fifty cents ($1,417.50) to Respondent for the trucking insurance policy issued by Respondent reportedly through Lloyds of London.

31. At no time did the trucking insurance policy sold by Respondent for Horseman's exist; Horseman's never received trucking insurance coverage from Respondent.

32. To date, Respondent has failed to refund the approximate one thousand, four hundred seventeen dollars and fifty cents ($1,417.50) paid by Patton.

33. On or about February 8, 2014, Respondent purportedly sold trucking insurance policy number CIF 8432671 reportedly through insurer Certain Underwriters at

Lloyds to insurance broker Salter to insure Action Mobile Home Movers ("Action"), a Santa Fe, Tennessee trucking company.

34. Action paid approximately one thousand, six hundred fifty-three dollars and sixty cents ($1,653.60) to Respondent for the trucking insurance policy issued by Respondent reportedly through Certain Underwriters at Lloyds.

35. At no time did the trucking insurance policy sold by Respondent for Action exist; Action never received trucking insurance coverage from Respondent.

36. To date, Respondent has failed to refund the approximate one thousand, six hundred fifty-three dollars and sixty cents ($1,653.60) paid by Action.

37. On or about March 12, 2014, Respondent purportedly sold trucking insurance policy number CSPR 41733 reportedly through insurer Lloyds of London to insurance broker Patton to insure Perry Green ("Green") d/b/a Green Boats, a Byrdstown, Tennessee company.

38. Patton, on behalf of Green Boats, paid approximately eight hundred sixty-one dollars ($861) to Respondent for the trucking insurance policy issued by Respondent reportedly through Lloyds of London.

39. At no time did the trucking insurance policy sold by Respondent for Green Boats exist; Green Boats never received trucking insurance coverage from Respondent.

40. To date, Respondent has failed to refund the approximate eight hundred sixty-one dollars ($861) paid by Patton.

41. On or about April 16, 2014, Respondent purportedly sold trucking insurance policy number CSAT 1043299 reportedly through insurer Certain Underwriters

at Lloyds to insurance broker Salter to insure Terrance Payne ("Payne") d/b/a T. Payne Trucking, a Chattanooga, Tennessee trucking company.

42. Payne, on behalf of T. Payne Trucking, paid approximately one thousand, nine hundred fifty-three dollars ($1,953) to Respondent for the trucking insurance policy issued by Respondent reportedly through Certain Underwriters at Lloyds.

43. At no time did the trucking insurance policy sold by Respondent for T. Payne Trucking exist; T. Payne Trucking never received trucking insurance coverage from Respondent.

44. To date, Respondent has failed to refund the approximate one thousand, nine hundred fifty-three dollars ($1,953) paid by T. Payne Trucking.

45. On or about May 1, 2014, Respondent purportedly sold a trucking insurance policy reportedly through insurer Lloyds of London to insurance broker Thomas and Associates to insure W.W. Express, Inc. ("W.W. Express"), a small trucking company in Culleoka, Tennessee, owned by Jason Walker ("Walker").

46. Walker, on behalf of W.W. Express, paid approximately twelve thousand dollars ($12,000) to Respondent for the trucking insurance policy issued by Respondent reportedly through Lloyds of London.

47. At no time did the trucking insurance policy sold by Respondent to W.W. Express exist; W.W. Express never received trucking insurance coverage from Respondent.

48. To date, Respondent has not paid any of the twelve thousand dollars ($12,000) trucking insurance payment back to Walker or W.W. Express.

49. On or about May 1, 2014, Respondent purportedly sold a trucking insurance policy reportedly through insurer Certain Underwriters at Lloyds to insurance broker Salter to insure East Coast Express, Inc. ("East Coast"), a Lascassas, Tennessee trucking company.

50. At no time did the trucking insurance policy sold by Respondent for East Coast exist; East Coast never received trucking insurance coverage from Respondent.

51. No money was ever remitted to Respondent for the East Coast trucking insurance policy.

52. On or about July 24, 2014, Respondent was arrested in Gwinnett County, Georgia and charged with ten (10) counts of insurance fraud.

53. To date, Respondent has not notified the Division regarding any criminal action, pending or otherwise, in Georgia State Court against him.

54. Upon information and belief, on or about July 24, 2014, Respondent was released from the Gwinnett County, Georgia jail on an approximately twenty-four thousand dollar ($24,000) bond.

55. On or about December 10, 2014, Respondent surrendered his Tennessee non-resident insurance producer license in response to the investigation into the aforementioned activity.

56. On or about May 6, 2015, Respondent was convicted of insurance fraud in the United States District Court for the Northern District of Georgia for misappropriation of approximately three million, seven hundred thousand dollars ($3,700,000) from approximately eight hundred (800) trucking companies in approximately twenty-two (22) different states.

57. To date, Respondent has not notified the Division regarding any criminal action in the United States District Court for the Northern District of Georgia, pending or otherwise, against him.

CONCLUSIONS OF LAW

58. In accordance with Tennessee Compilation Rules and Regulations 1360-04-01-.02(7), the Division bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the First Amended Notice of Charges are true and that the issues raised therein should be resolved in its favor.

59. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(a) provided that, in pertinent part, "[t]he commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with this section or take any combination of those actions, for any one (1) or more of the following causes:

. . . .

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

. . . .

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

. . . .

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

60. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(g) provided that: "[i]f, after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The person to cease and desist from engaging in the act or practice giving rise to the violation;

(2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license."

61. At all times relevant hereto, Tenn. Code Ann. § 56-6-119(b) has provided that "[w]ithin thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents."

62. At all times on or after July 1, 2011, Tenn Code Ann. § 56-6-112(h) provided that: "[i]n determining the amount of penalty to assess under this section, the commissioner shall consider:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation."

63. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent engaged in a total of **forty-eight (48)** violations of Tennessee Insurance Laws. The record shows that Respondent knowingly engaged in: **one (1)** violation of Tenn. Code Ann. § 56-6-119(b) (2002), which constitutes a continuing violation of Tenn. Code Ann. § 56-6-112(a)(2) (2011); **eleven (11)** continuing violations of Tenn. Code Ann. § 56-6-112(a)(4) (2011); **twelve (12)** violations of Tenn. Code Ann. § 56-6-112(a)(5) (2011); **one (1)** violation of Tenn. Code Ann. § 56-6-112(a)(6) (2011); and **twenty-three (23)** violations of Tenn. Code Ann. § 56-6-112(a)(8) (2011).

64. From on or about July 9, 2013, to on or about May 1, 2014, Respondent violated Tenn. Code Ann. § 56-6-112(a)(5) on twelve (12) occasions by intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance when he sold fake and fraudulent insurance policies to his clients.

65. From on or about July 9, 2013, to on or about May 1, 2014, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) on eleven (11) separate occasions by misappropriating premium payments in the course of insurance business from his insurance clients associated with the fake and fraudulent insurance policies he sold to

these clients. These misappropriations, remaining uncured, constitute continuing violations pursuant to Tenn. Code Ann. § 56-6-112(g)(2).

66. From on or about July 9, 2013, to on or about May 1, 2014, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2011) on twenty-three (23) separate occasions by selling fake and fraudulent insurance policies to his insurance clients and collecting and misappropriating premium fund assessments thereunder.

67. On or about May 6, 2015, Respondent violated Tenn. Code Ann. § 56-6-112(a)(6) by being convicted of felony insurance fraud in the United States District Court for the Northern District of Georgia.

68. Respondent violated Tenn. Code Ann. § 56-6-119(b) by failing to report to the Division within thirty (30) days of his initial pretrial hearing date the criminal prosecution associated with his conviction of felony insurance fraud in the United States District Court for the Northern District of Georgia.

69. Respondent violated Tenn. Code Ann. § 56-6-112(a)(2) by violating Tenn. Code Ann. § 56-6-119(b).

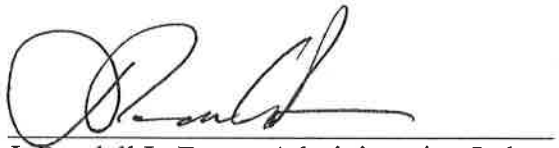
It is therefore **ORDERED** that the insurance producer license of Respondent John Paul Kill, numbered 2177369, be **REVOKED**, and that the Respondent pay a total civil monetary penalty of **one hundred thousand dollars ($100,000)**, plus the Division's litigation costs pursuant to TRCP 54.04. This penalty is assessed as follows:

1. One thousand dollars ($1,000.00) for each violation and continuing violation of §§ 56-6-112(a)(2), 56-6-112(a)(4), 56-6-112(a)(5), 56-6-112(a)(6), and 56-6-112(a)(8), and

Tenn. Code Ann. § 56-6-119(b) as described in the Conclusions of Law annotated in paragraphs one through ninety of this Order for a total of one hundred thousand dollars ($100,000).

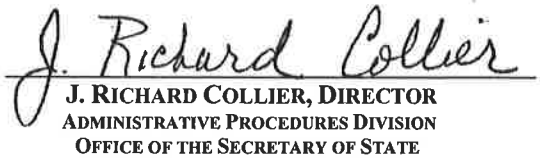
Respondent shall have **sixty (60) days** from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus the Division's litigation costs.

This Initial Order entered and effective this 19TH day of OCT, 2015.



J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 19TH day of OCTOBER 2015.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.